5-21-1976

Owensboro Metropolitan Planning Commission, consisting of Dr. Albert Joslin, Robert Hoskins, Holloway Hawes, Wilbur "Buzz" Norris, Jolly Hayden, Lee K. Nelson, Billy Joe Miles, Robert Riggs, Willis P. Brooks and Jarred Barron, in their official capacity as members thereof v. O.H. Snyder and Helen C. Snyder, his, d/b/a Owensboro Homes, a partnership

Appellant's Brief 1976-SC-0403

APPELLANT'S BRIEF

556 S.W.2d 672

SUPREME COURT OF KENTUCKY

FILE NO. 76-403

OWENSBORO METROPOLITAN PLANNING COMMISSION, consisting of Dr. Albert Joslin, Robert Hoskins, Holloway Hawes, Wilbur "Buzz" Norris, Jolly Hayden, Lee K. Nelson, Billy Joe Miles, Robert Riggs, Willis P. Brooks and Jarred Barron, in their official capacity as members thereof ..... APPELLANT

v.

O. H. SNYDER and HELEN C. SNYDER, his wife, d/b/a OWENSBORO HOMES, a partnership ..... APPELLEES

APPEAL FROM DAVIESS CIRCUIT COURT, DIVISION II
HONORABLE ROBERT M. SHORT, PRESIDING

BRIEF FOR APPELLANTS

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This is to certify that separate copies of this brief have been served on opposing counsel for the adverse parties and the Trial Judge, pursuant to RCA 1.250.

This 21st day of May, 1976.

Attorney for Appellant

PROGRESS PRINTING COMPANY, OWENSBORO, KENTUCKY

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STATEMENT OF QUESTIONS PRESENTED

I

Was the denial by Daviess Fiscal Court of Appellees' request for a rezoning of their tract of land from A-1 to R-3 arbitrary and confiscatory?

II.

Did the Daviess Circuit Court usurp the zoning function of the Daviess Fiscal Court in ordering it to rezone Appellees' tract R-3?

III.

Could the Owensboro Metropolitan Planning Commission require the Appellees to submit a development plan before considering a rezoning of the Appellees land?

SUPREME COURT OF KENTUCKY
File No. 76-403

OWENSBORO METROPOLITAN
PLANNING COMMISSION,
consisting of Dr. Albert Joslin,
Robert Hoskins, Holloway Hawes,
Wilbur "Buzz" Norris, Jolly Hayden,
Lee K. Nelson, Billy Joe Miles,
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capacity as members thereof . . . . . APPELLANT

V.

O. H. SNYDER AND HELEN C. SNYDER,
his wife d/b/a OWENSBORO HOMES,
a partnership . . . . . APPELLEES

BRIEF FOR APPELLANT

May it please the Court:

STATEMENT OF THE CASE

This appeal involves the zoning classification of 21.19 acres of land in Daviess County, Kentucky.

The appellees are purchasing the above mentioned tract under a contract and bond for a deed (TR 148F). In a series of appearances beginning in December of 1973, the appellees sought various changes in the zoning classification of their tract.

The community's Comprehensive Plan shows the ultimate land use of appellees' tract as low density residential (TR 202, Roger Anderson Deposition, September 30, 1975, Exhibit "A," Comprehensive Plan, Volume 3, last page, Ultimate Land Use Plan). The three residential classifications under the Daviess County Zoning Ordinance are: R-1, low density residential with a maximum density of four units per acre; R-2, medium density residential with a maximum density of ten units per acre; R-3, high density residential with a maximum density of seventy-seven units per acre.

The existing classification of the 21.19 acre tract is A-1 (agricultural). At the time that the tract was zoned A-1, it was rolling pasture land adjoining other farm land. The only change in the area since that time has been the development of R-1 (low density) housing to the north of the appellees' tract.

The initial zoning classification change sought by the appellees involved a request for the rezoning of fifteen or sixteen acres of the tract from A-1 (agricultural) to R-1 (low density residential) and a change of the remaining acreage from A-1 (agricultural) to R-3 (high denisty residential). The Owensboro Metropolitan Planning Commission (hereinafter referred to as OMPC)

agreed to recommend a change for the fifteen or sixteen acres to R-1 if the appellees would agree to subdivide the land so as to comply with Daviess County Zoning Ordinance 3.04, which requires that zoning boundaries follow lot lines, streets or streams (TR 1, Complaint, Exhibit "A", pages 6-7). The appellees chose not to follow this course of action, rather, after a series of unsuccessful attempts to gain approval of the zoning changes classifying part of the property R-1 and the rest of the property R-3, the appellees sought the approval of a classification change to R-3 for the entire tract. Since R-3 is the highest density residential classification contained in the Daviess County Zoning Ordinance, the OMPC refused to recommend a rezoning of the entire tract to R-3 unless the appellees submitted a development plan which would assure the density would be restricted to an acceptable level.

The appellees, rather than submit a development plan, submitted a letter containing three statements of their objectives in regard to the subject property. (T.R. 26). This letter gave no indication of the density to be placed on the land.

Consequently, the OMPC recommended that the requested change in classification not be granted due to an inadequate development plan.

On June 9, 1975, the Daviess Fiscal Court, conducted a hearing on the proposed rezoning. Evidence was presented by the Planning Director, Roger Anderson; O. H. Snyder, one of the

appellees; and by various interested citizens.

The Planning Director of the OMPC presented a short history of the appellees' rezoning requests and the OMPC's action on each of them. He testified as to his concern about the density to be placed on the appellees' tract and he gave examples of other rezonings to R-3 where development plans or preliminary plats had been required prior to the approval of the rezoning (Transcript of Evidence, Daviess Fiscal Court, page 87). He correlated the OMPC's concern about the density to be placed on the tract to the potential flood problem existing on Horse Fork Creek and the traffic safety problem caused by the narrowness of the road surface and bridge on Veatch Road (Transcript of Evidence, Daviess Fiscal Court, pages 81-82). Several property owners from the area voiced their concern about the drainage problem and the inadequacy of Veatch Road (Transcript of Evidence, Daviess Fiscal Court, pages 96-101).

The appellees' evidence consisted of the testimony and the feasibility study of O. H. Snyder, one of the appellees. Mr. Snyder testified that R-3 was the only classification under which it would be economically feasible to develop his property. He attempted to substantiate this with his own feasibility study which he had prepared and submitted to the Daviess Fiscal Court. All the evidence which the appellees presented to the Daviess Fiscal Court dealt solely with the affect the zoning change would have on the appellees' investment.

The Daviess Fiscal Court voted unanimously to reject the application for a change in classification from A-1 to R-3. They stated as their reasons the following:

(1) Vagueness of project and pressing problems of county drainage;

(2) Transportation and traffic safety problems;

(3) Flood control impact;

(4) Fire fighting and police protection;

(5) Emergency medical service - lacking;

(6) The density permitted in R-3 could be excessive, thus compounding the above stated problems;

(7) It is a violation of the intent of the Daviess Fiscal Ordinance, dated October 16, 1973;

(8) A study is now being conducted concerning the drainage situation in this area which requires a considerable amount of time;

(9) Lack of an adequate development plan. (Transcript of Evidence, Daviess Fiscal Court, pages 113-114).

These reasons were given after the vote of the Commissioners of the Daviess Fiscal Court on June 9, 1975. Subsequently, the Daviess Fiscal Court issued a more detailed list of the reasons for the denial (T.R. 23-28).

The appellees appealed the decision of the Daviess Fiscal Court to Daviess Circuit Court. The Circuit Court found the action of the Daviess Fiscal Court to be arbitrary and confiscatory and ordered the Fiscal Court to approve a change in

classification of the subject property from A-1 to R-3. The OMPC and the Daviess Fiscal Court have filed appeals and the Snyders have filed a cross appeal.

ARGUMENT

I. THE DECISION OF THE DAVIESS FISCAL COURT TO DENY THE APPELLEES' APPLICATION FOR REZONING OF THE 21.19 ACRE TRACT WAS NEITHER ARBRITARY NOR CONFISCATORY, BUT WAS THE ONLY COURSE OF ACTION PERMISSIBLE UNDER THE CRITERIA OF KRS 100.213.

Appellants takes issue with the findings of fact, conclusions of law, and the judgment which was entered on the 15th day of January, 1976, by the trial court. The judgment was based upon the following erroneous findings:

1. That the proposed rezoning was in agreement with the Comprehensive Plan. (T. R. 426)

2. That the original zoning classification of subject property to agricultural (A-1) conflicts with the Comprehensive Plan and was

inappropriate or improper within the meaning of KRS 100.213. (T.R. 426)

3. That there had been major changes in the area of the subject property which indicated a compelling need to rezone subject property to high density (R-3). (T. R. 426)

4. That R-3 is the only classification in which development for residential purposes is economically feasible.

The record is without evidence to support these findings.

There is a presumption favoring the validity of a zoning ordinance and the burden is upon the person attacking it to establish its invalidity. *Clark v. City of Paducah, Ky.*, 439 S. W. 2d. 84; *Schloemer v. City of Louisville,* 298 Ky. 286, 182 S. W. 2d. 782.

The legislature has set definite standards which must be met before a legislative body can adopt a map amendment — effect a change in a zoning classification. These standards are set out in KRS 100.213, which reads as follows:

> "Before any map amendment is granted, the planning commission or the legislative body or fiscal court must find that the map amendment is in agreement with the community's comprehensive plan, or, in

> the absence of such a finding, that one or more of the following apply and such finding shall be recorded in the minutes records of the planning commission or legislative body or fiscal court.
> (1) That the original zoning classification given to the property was inappropriate or improper.
> (2) That there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the community's comprehensive plan and which have substantially altered the basic character of such area."

It should be noted that the legislature used the words "original" and "was" in subsection (1), i.e., "That the original zoning classification given to the property was inappropriate or improper." The use of "original" and "was" indicates that the focus is to be on the conditions as they existed at the time the existing or "original" classification was adopted. It is significant that the legislature did not choose to use "is" in subsection (1); the present suitability of the existing classification is to be determined under subsection (2), i.e., "That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the community's comprehensive plan and which have substantially altered the basic character of

such area."

The legislature qualified the word "changes" as it is used in subsection (2). It required that the "changes" be:

(1) *Major,*

(2) Those which were not anticipated in the community's comprehensive plan, and

(3) Those which have substantially altered the character of the area in which the property lies.

The change in classification sought by the appellees is not in agreement with the community's comprehensive plan. The comprehensive plan, which has been followed since 1965 shows the future development in the area in which the appellees' tract lies to be low density residential. The classification sought by appellees, R-3, allows high density, multi-family dwellings with a maximum density of 77 units per acre.

There is no evidence in the record to substantiate a finding necessary for a map amendment under subsection (1) of the statute. At the time the 21.19 acre tract was zoned A-1, it was rolling pasture land adjoining other farm land. Certainly, such a classification was neither "inappropriate" nor "improper".

There is no evidence in the record to substantiate a finding under subsection (2) of the statute. The changes in the area in which the appellees' tract lies are basically those predicted by the comprehensive plan. The area is bound by low density residential and farm land. The basic character of the area remains substantially unchanged.

The appellees have failed to show that any of the requirements for a zoning change as set out in KRS 100.213 have been met. The change in classification sought by the Appellees is not in agreement with the comprehensive plan. The original zoning classification given to the property by Daviess Fiscal Court in September, 1971, was neither "inappropriate" nor "improper". There have been no major changes of an economic, physical, or social nature within the area involved which were not anticipated in the community's comprehensive plan and the basic character of the area remains substantially unchanged.

The evidence presented by the appellees at the hearing before the Daviess Fiscal Court consisted of the testimony and feasibility study of O. H. Snyder, one of the appellees. Snyder restricted his testimony to the economic impact of the present zoning classification upon he and his wife. Snyder gave no evidence which would indicate that the original zoning of the property in September, 1971, was "inappropriate" or "improper" . He pointed out no major changes within the area which were not anticipated in the community's comprehensive plan

or which have substantially altered the basic character of the area. His testimony centered on what he believed to be the only economically feasible classification under which he could develop his property.

The appellees introduced into evidence a feasibility study which had been prepared by O. H. Snyder. The study attempts to show that the only way that the appellees can make a profit from their venture is for the Daviess Fiscal Court to reclassify their land as R-3. On the basis of this self-serving feasibility study, the appellees allege that the failure to rezone their property is tantamount to a confiscation by the Daviess Fiscal Court. The appellees presented nothing but the testimony and feasibility study of O. H. Snyder to substantiate this allegation.

The Kentucky Court of Appeals has repeatedly asserted that financial loss or diminution of profits is not a sufficient showing of unwarranted hardship on the land owner to make refusal to change a zoning classification an arbritary or discriminatory act. The Court enunciated this principle as long ago as 1944 in *Scloemer v. City of Louisville,* 298 Ky. 286, 182 S.W. 2d 782, where Justice Sims wrote:

> "Appellants' argument is without merit that the financial loss they will suffer by reason of placing their property in a residential zone works an unwarranted hardship

> upon them. Almost invariable some property owners suffer financially as a result of zoning ordinances. But the mere fact that a commercial use may be more profitable than a residential use of their property, is not sufficient evidence of the unwarranted hardship on the appellants."

This principle was reiterated in *Clark v. City of Paducah,* Ky. 439 S.W. 2d 84, as follows:

> ". . . private interests are not superior to to those of the public. Almost invaraibly some property owners suffer an actual or speculative financial loss as a result of zoning restrictions, but the mere fact that a forbidden use of property would be more profitable, is not an unwarranted hardship which would require a finding of arbitrary action. *Schloemer v. City of Louisville,* 298 Ky. 286, 182 S. W. 2d 782."

Therefore, the fact that O. H. Snyder and his wife could earn a greater return on this investment if the zoning classification of the tract was changed to R-3 will not in and of itself justify the rezoning of the tract. This is not a sufficient hardship on the appellees to warrant a change. More important, this is not evidence that the original classification (A-1) which existed when the appellees purchased the

land "was" inappropriate or improper" when first given to the tract in September, 1971; nor is it evidence of "major changes of an economic, physical or social nature within the area involved which were not anticipated in the community's comprehensive plan and which have substantially altered the basic character of such area." KRS 100.213.

A situation very similar to the one at bar was presented to the Court in *City of Bowling Green v. Hunt,* Ky., 516 S. W. 2d 647. The landowners in *Hunt* argued that the zone change which they sought should have been granted by the legislative body because previous rezoning of adjacent property established that their property was entitled to the same findings and treatment and because their property would acquire more economic value if it were rezoned.

Opponents of the change introduced evidence that there had been no major unanticipated changes in the area and that a rezoning would cause a more severe traffic problem. The testimony of the Planning Director corroborated the evidence presented by the opponents of the change.

The Court of Appeals pointed out that judicial review was confined to the record made before the legislative body. In holding that the Circuit Court was without authority to disturb the decision of the legislative body from the record presented, Justice Reed wrote:

> *"The authorities upon whom the duty to zone and rezone is imposed could have been reasonably persuaded by the evidence in support of the zone change, but they were not.* In view of the contradictory relevant evidence, it is our view that in this case a reviewing Court cannot properly say that the evidence for the Appellees was so conclusive and compelling concerning the need for the change in classification, the appropriateness of the existing zoning that the decision of the legislative body can be declared arbitrary." Id. at 648 (Emphasis added).

Assuming arguendo that the testimony of O. H. Snyder and the feasibility study which he prepared were sufficient to meet the criteria as set out in KRS 100.213, "contradictory relevant evidence" presented by the Planning Director and neighboring landowners concerning the severe traffic problem and the existing drainage problem which would be exacerbated by high density housing was more than sufficient to justify the decision of the legislative body to refuse the rezoning request.

The appellees' evidence could at best raise no more than a doubt about the Fiscal Court's action in denying the rezoning, and as the Court of Appeals stated in *Clark v. City of Paducah,* Ky., 439 S. W.

2d 84, at 86:

> "There is a presumption favoring the validity of a zoning ordinance and the burden is upon those attacking it to prove that it was arbitrary and unreasonable. If there is no more than a doubt about its validity, it must stand as a valid exercise of the police power. *Schloemer v. City of Louisville,* 298 Ky. 286, 182 S. W. 2d 782."

The action of the Daviess Fiscal Court was neither arbitrary nor confiscatory. The appellees failed to show that the requested classification change was in conformity with the comprehensive plan. The appellees failed to show that the original zoning classification *was* inappropriate or improper. The appellees failed to show that there have been major unanticipated changes which have altered the basic character of the area. Since the appellees were unable to meet any of the criteria set out in KRS 100.213, the Daviess Fiscal Court had only one course of action — denial of the requested zoning change.

Therefore, the Circuit Court was in error in holding that the Daviess Fiscal Court's denial of the Appellees' request for rezoning was arbitrary and confiscatory. The judgment should be reversed and the decision of the Daviess Fiscal Court should be upheld.

II. ASSUMING THAT THE DAVIESS FISCAL COURT ACTED ARBITRARILY IN DENYING THE REQUEST OF THE APPELLEES FOR A ZONING CHANGE, THE CIRCUIT COURT WAS WITHOUT AUTHORITY TO DIRECT THE DAVIESS FISCAL COURT TO RECLASSIFY THE APPELLEES LAND R-3.

The function of the Circuit Court in reviewing a zoning decision made by a legislative body is to determine whether the record made before the legislative body supports the decision rendered. Where it finds that the legislative body acted arbitrarily in denying a request for a change in zoning classification, the Circuit Court is not empowered to direct the legislative body to give a parcel of land a particular classification. *City of Louisville, v. McDonald,* Ky., 470, S. W. 2d, 173. Judicial review is confined to a determination of whether the zoning action taken was arbitrary. Id., at 178; *American Beauty Homes Corp. v. Louisville, etc.,* Ky., 379 S. W. 2d 450.

The general rule as enunciated in *City of Louisville v. McDonald,* supra, was not followed in *City of Louisville v. Kavanaugh,* Ky., 495 S.W. 2d 502. However, the Court in *Kavanaugh* was presented with a unique situation which is distinguishable from the case at bar. In *Kavanaugh*

the comprehensive land use plan designated the subject property R-6, the Planning Commission had recommended R-6, and no evidence had been developed before the legislative body to refute the evidence for the change. Justice Reed explained the apparent conflict as follows:

> "If there is some question concerning the possible assignment of a zoning category other than R-6, that would entail administrative or legislative discretion, we would have to characterize the action of the Circuit Judge directing assignment of the R-6 category as erroneous, but in this instance we are not presented with that situation." Id., at 505.

The situation presented in this Appeal is vastly different from that presented to the Court in *Kavanaugh*. Here the Planning Commission did not recommend the change; it recommended that the requested change be denied. Here the legislative body is not faced with a situation where the change is in conformity with the comprehensive plan; the comprehensive land use plan shows the tract to be low density residential. Here the legislative body is not faced with a single choice should a change be found to be warranted; the legislative body would have a choice of R-1, R-2, or R-3. Here there was no absence of contradictory evidence; the Planning Director and neighboring property owners offered

substantial relevant evidence opposing the zoning change.

Therefore, the de novo determination by the Circuit Court that the appellees' property should be rezoned in the particular classification sought by the appellees is clearly erroneous. The Circuit Court usurped the "administrative or legislative discretion" of the Daviess Fiscal Court in ordering the Fiscal Court to re-classify appellees' tract R-3, and its order should be vacated.

III. THE OMPC WAS AUTHORIZED TO REQUIRE THE APPELLEES TO FILE A DEVELOPMENT PLAN AS A CONDITION TO RECLASSIFICATION OF THE APPELLEES PROPERTY TO R-3.

The OMPC recommended that the Appellees' request for a zoning change to R-3 be denied because of the Appellees' failure to submit an adequate development plan. This was also one of the grounds on which the Daviess Fiscal Court denied the rezoning application.

The OMPC had not required a development plan in conjunction with Appellees' previous request for an R-1 classification for fifteen (15) or sixteen (16) acres of the subject tract because the density to be placed upon land under an R-1 classification is restricted by the zoning ordinance. However, under the residential classification R-3, a maximum

density of 77 units per acre is permitted. Consequently, with this wide range of permissible density under R-3, some further means of density control is required.

The Legislature has provided the required flexibility in KRS 100.203 (2) which reads:

> "The text may provide that the planning unit, as a condition to the granting of any zoning change may require the submission of a development plan which, where agreed upon, shall be followed."

This provision was adopted by the Daviess Fiscal Court by an ordinance dated January 18, 1972 (TR 390-391).

The Court of Appeals in *Central Kentucky Development Company v. Knippenberg,* Ky., 416 S.W. 2d 745, held that a planning commission did not exceed its powers where it required the person requesting a zoning change to submit to it a proposed plan for the development of the area. The court stated that under KRS 100.350 (since repealed) the Commission had the power "to obtain any pertinent information which would assist it in determing upon a proper land use". Id., at 746. In the case before the Court, the relevant statute is much more specific than the former KRS 100.350. Under KRS 100.203 (2) the legislative body may provide in the zoning text that the planning commission can require the submission of a

development plan as a condition to the granting of any zoning change. The Daviess Fiscal Court saw fit to adopt an ordinance which empowers the OMPC to require a development plan pursuant to KRS 100.203 (2).

The OMPC has required that a development plan or a preliminary plat be approved as a prerequisite to its recommendation for a change in classification to R-3 where there is a recognizable need to control the density to be placed on the land. The Planning Director, Roger Anderson, testified that such a requirement was imposed in granting approval to other R-3 changes (Transcript of Evidence Daviess Fiscal Court, page 78). Anderson, likewise, explained the use of the development plan requirement as a density control technique used to restrict an R-3 classification to a density level compatible with the surrounding area (Transcript of Evidence, Daviess Fiscal Court, pages 81-82).

Since the density placed on the Appellees' land would have a pronounced affect upon existing and potential traffic safety and drainage problems, the OMPC required the Appellees to submit a development plan so that it might act on the application knowing what density was proposed for the property.

The development plan which was filed by the Appellees is set out as follows:

> "I. It is proposed that substantial physical installation of the special land improve-

ments will be initiated within one (1) year after approval of the requested zoning, and approval of the preliminary plat.

II. The subdivision will be developed on a unit basis, beginning with Unit #1, and development of the remaining units as indicated by economic conditions. Estimated development time is 7.5 years as of February, 1975.

III. The developer of this property does not intend to construct any improvements on the property unless required for promotional purposes, or to preserve the character of the development." (T. R. 26)

This "development plan" made no provision for the density to be placed on the land. The OMPC felt that it could not make a determination in regard to the Appellees application for the zoning change to R-3 in the absence of a development plan which showed the proposed density. Consequently, it was compelled to recommend to the Daviess Fiscal Court that the change sought by the Appellees be denied.

The OMPC submits that its requirement that the Appellees submit an adequate development plan before a consideration of the requested zoning change to R-3 could be made was a valid exercise of the authority granted under KRS 100.203 (2). The

development plan requirement has been used as a means of controlling the density to be placed upon land which is to be classified R-3, and as such it bears a direct relationship to the health, safety and welfare of the community.

CONCLUSION

The Trial Court made certain Findings of Fact upon which the Judgment is based. These Findings must be supported by facts in the record. The facts in the record do not support the Trial Court's findings. The Trial Court stated that the proposed rezoning was in agreement with the Comprehensive Plan. The Comprehensive Plan shows the future development of subject property as Low Density Residential. The proposed rezoning would classify the property as High Density, Multiple Family Residential (R-3).

The Trial Court found that the original zoning classification of subject property as Agricultural (A-1) is inappropriate. There is no evidence in the record to substantiate this Finding.

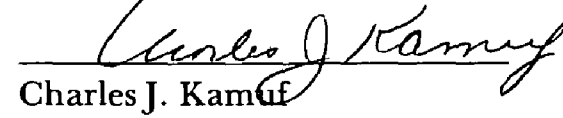
The Trial Court found that there had been major changes in the area of the subject property indicating a compelling need to rezone the property as High Density Residential (R-3). The record is without any evidence of major changes in the area. Certainly the record is without facts showing a "compelling need" to rezone the property to High Density Residential (R-3).

The Trial Court found that the R-3 Classification is the only classification in which development for residential purposes is economically feasible. Financial loss or diminution of profits is not a sufficient showing of unwarranted hardship on the landowner to make refusal to change a zoning classification an arbitrary or discriminatory act. The fact that the Appellees could earn a greater return on their investment if the subject property were zoned R-3, does not in and of itself justify the rezoning of the property. Economic feasibility is not one of the tests set out in KRS 100.213.

The Trial Court cannot base its judgment on bare statements which are not supported by facts in the record. The trial Court must point to certain facts which justify its finding. These facts are not in the record. Therefore, the decision of the Daviess Fiscal Court to deny Appellee's application for rezoning was neither arbitrary nor confiscatory but rather the only course of action available under KRS 100.213.

The Circuit Courts' judgment is unsupported by the record and usurps the zoning function of the Daviess Fiscal Court. The Appellants respectfully request that this Honorable Court reverse the Judgment of the Daviess Circuit Court and uphold the action of the Daviess Fiscal Court in denying the zoning change.

Respectfully submitted,



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